

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ENTROPIC COMMUNICATIONS, LLC

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Civil Action No. 2:22-CV-00125-JRG

JURY TRIAL DEMANDED

**PLAINTIFF ENTROPIC COMMUNICATIONS, LLC'S SUPPLEMENTAL
MOTION TO STRIKE OPINIONS OF CHRISTOPHER BAKEWELL**

I. INTRODUCTION

Plaintiff Entropic Communications, LLC (“Entropic”) files this motion to supplement Entropic’s Motion to Strike Opinions of Christopher Bakewell (Dkt. 174) and Entropic’s Reply (Dkt. 240) in light of Mr. Bakewell’s Second Supplemental Expert Report Regarding Damages served on September 25, 2023. This Supplemental Motion to Strike is contingent upon the denial of Charter Communications, Inc.’s (“Charter”) Opposed Motion to Amend the Docket Control Order, which was filed on September 26, 2023. *See* Dkt. 216.

II. ARGUMENT

On September 25, 2023, Charter served Mr. Bakewell’s Second Supplemental Expert Report. Shimota Decl., ¶ 2, Ex. A In paragraphs 17, 19, 24, 26, 30, and 34–36, Mr. Bakewell relies solely on an “interview” with Dr. Almeroth as the basis for his opinions. *Id.* at ¶¶ 17, 19, 24, 26, 30, and 34–36. However, these opinions were not disclosed in Dr. Almeroth’s own expert report prior to the close of expert discovery. Instead, these opinions lie within Dr. Almeroth’s Second Supplemental Rebuttal Expert Report, which was served *after* the close of expert discovery on September 26, 2023. Shimota Decl., ¶ 3, Ex. B.

If Charter’s Opposed Motion to Amend the Docket Control Order is denied and Dr. Almeroth’s Second Supplemental Expert Report is excluded, Mr. Bakewell’s opinions in his Second Supplemental Expert Report Regarding Damages will lack the necessary technical support. *See* Dkt. 216. While a damages expert may rely on a technical expert’s opinions, “this is not carte blanche for a damages expert to introduce undisclosed opinions of the technical expert.” *Finalrod IP, LLC v. Endurance Lift Sols., Inc.*, No. 2:20-cv-00189-JRG-RSP, 2021 WL 4906217, at *2 (E.D. Tex. Oct. 20, 2021); *see Cedillo v. Sec’y of HHS*, 617 F.3d 1328, 1341–42 (Fed. Cir. 2010); *see also ClearValue Inc. v. Pear River Polymers, Inc.*, 560 F.3d 1291, 1302 (Fed. Cir. 2009).

Charter should not be permitted to “backdoor otherwise undisclosed technical opinions in this case.” Order, *General Access Sols., Ltd. v. Sprint Spectrum LLC*, No. 2:20-CV-00007-RWS (E.D. Tex. Aug. 6, 2021).

III. CONCLUSION

If Charter’s Opposed Motion to Amend the Docket Control Order is denied, Entropic requests that the Court strike paragraphs 17, 19, 24, 26, 30, and 34–36 from Mr. Bakewell’s Second Supplemental Expert Report Regarding Damages.

Dated: October 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served via email on all counsel of record on October 13, 2023.

/s/ James A. Shimota
James A. Shimota

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

This is to certify that the exhibits referenced in this motion and filed concurrently should be filed under seal because it contains material designated by the parties as confidential pursuant to the Protective Order entered in this case (Dkt. 36).

/s/ James A. Shimota
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